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Appl. No. : 09/557,234
Filed : April 24, 2000

REMARKS

In response to the Office Action mailed May 29, 2003, Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the above amendments and the following remarks.

All Claims Currently Are In Condition For Allowance

The Examiner rejected all of the pending claims under 35 U.S.C. § 103(a) as unpatentable over the LBS Buyers Guide 2001, Horticulture & Amenity Supplies in view of the Kimbrew-Walter Roses "Jet-All" sprayer. Applicant respectfully traverses the rejection, and contends that the pending claims are patentable over the cited references. More specifically, Applicant contends that all of the limitations of the pending claims are not taught or suggested by the cited references, and that the LBS reference is not prior art to the present application. Further, Applicant submits herewith secondary considerations showing that Applicant's invention has satisfied a long felt, previously unsolved need, and that the invention is commercially successful because of its claimed attributes. As such, Applicant contends there is ample basis for patentability.

Examiner Has Not Applied Correct Standard of Patentability

The Examiner states that the combination of LBS and Jet-All contains all of the structural limitations of Applicant's claim language. Applicant respectfully disagrees, as will be discussed in detail below. The Examiner further states:

The intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Office Action, Page 3.

Unfortunately, the Examiner has erroneously stated and applied the patent law. 35 U.S.C. § 101 states "Whoever invents or discovers any new and useful process, machine . . . may obtain a patent therefor" The patent statute further clarifies that "The term 'process' means process, art or method, and *includes a new use of a known process, machine, manufacture, composition of matter, or material.*" 35 U.S.C. § 100(b)(emphasis added). Further, the MPEP clarifies that "New and unobvious uses of old structures and compositions may be patentable." M.P.E.P. § 2112.02. Applicant contends that the claimed invention is structurally different than

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the cited art; however, even if it were structurally similar, it would still be patentable over the cited art, because it uses such structure in a manner never before recognized, taught or suggested.

Regardless of the structure taught by any combination of LBS and Jet-All, there is no teaching or suggestion in these references of the method described in the claims.

The Claims Are Not Taught by the Cited References Taken Alone or in Combination

The LBS reference teaches several water lances. The Jet-All reference teaches a nozzle adapted to be attached on the end of a water lance (different than LBS water lances). As discussed in responses to previous Office Actions, the Jet-All nozzle shoots a spray generally upwardly from an upward side of the Jet-All nozzle, and the user must carefully maintain the orientation of the nozzle in order to spray the undersides of leaves.

The Examiner contends that it would be obvious to combine one or more LBS lances with the Jet-All nozzle. In light of the teachings of the Jet-All reference, such a combination would simply be the Jet-All nozzle attached to the end of an LBS water lance, and would thus be quite similar to the Jet-All disclosure but with a differently shaped lance. Moreover, the combination does not teach all of the structural and other limitations of the claims. For example, the combination does not teach a “nozzle portion having a longitudinal axis and being adapted to direct water flow outwardly around substantially the entire circumference of the nozzle axis . . .” as is recited in Claim 19. Further, there is no teaching or suggestion in either reference, or a combination of the references, to perform the positioning, advancing and retracting, and rotating steps as recited in Claim 19.

Combination of Cited Art Does Not Inherently Teach Claimed Invention

The Examiner contends that the LBS/Jet-All combination “inherently teaches” several limitations of various claims.

However, Applicant contends that the features considered inherent by the Examiner are not, in fact, inherent to the LBS/Jet-All combination. As stated in the M.P.E.P.:

“To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is *necessarily present* in the thing described in the reference, and that it *would be so recognized* by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’” M.P.E.P. §2112 (citing *In re Robertson*, 49 U.S.P.Q. 2d 1949, 1950-51 (Fed. Cir. 1999))(emphasis added).

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Filed : April 24, 2000

Claim 19 recites, *inter alia*, providing a hand held spraying apparatus having a nozzle portion having a longitudinal axis and being adapted to direct water flow outwardly around substantially the entire circumference of the nozzle; advancing and retracting the nozzle generally horizontally so that a flow of water impacts the leaf underside along its length; rotating the apparatus at least about 90° so that the longitudinal axis of the nozzle is moved to a second elevation but remains generally horizontally disposed during rotation; and advancing and retracting the nozzle generally horizontally at the second elevation.

Plainly, and as discussed in response to other Office Actions, the Jet-All device never contemplates such a manner of use, and is not capable of satisfying the recited limitations. For example, the nozzle arrangement of Jet-All cannot satisfy the claim. Further, there is no teaching to use the LBS water lances in the manner described above. Even if the LBS/Jet-All combination were capable of being used as set out in Claim 19, there is no teaching or indication that such use has been or would be recognized.

Applicant reminds the Examiner that "Obviousness cannot be predicated on what is not known at the time an invention is made, even if the inherency of a certain feature is later established." M.P.E.P. § 2141.03 (citing *In re Rijckaert*, 28 U.S.P.Q. 2d 1955 (Fed. Cir. 1993)). Plainly, the claimed methods were not known at the time the invention was made. As such, Applicant respectfully requests the Examiner to withdraw the rejection of the claim.

LBS Is Not Appropriate Prior Art

The LBS reference cited by the Examiner is dated 2001. The above-captioned application was filed on April 24, 2000. As such, the LBS reference is not prior art to the above-captioned application.

The Claimed Invention Satisfies a Long-felt Need Not Solved by Others

The claimed invention satisfies a long-felt need which was recognized by gardeners. Although attempts have been made, no other has previously been able to satisfy this need.

According to the M.P.E.P., establishing long-felt need depends on the following factors:

First, the need must have been a persistent one that was recognized by those of ordinary skill in the art. . . .

Second, the long-felt need must not have been satisfied by another before the invention by applicant. . . .

Third, the invention must in fact satisfy the long-felt need.

M.P.E.P. §716.04 (emphasis added)

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Filed : April 24, 2000

Applicant's claimed invention satisfies these factors. As such, this is evidence that Applicant's claimed invention is nonobvious, and Applicant respectfully requests that the Examiner withdraw the rejection of the claims.

Submitted with this Response is a Declaration of Patrick O'Donnell, the inventor of the above-captioned application, in which Mr. O'Donnell clarifies that he currently markets a method and apparatus for dislodging insects under the trade name "THE BUG BLASTER™". Paragraph 2 of the Declaration clarifies that The Bug Blaster™ incorporates the limitations of at least Claim 19 of the instant application, and The Bug Blaster™ is within the scope of Claim 19. Thus, further references to The Bug Blaster™ can be taken to refer to at least Claim 19. The Bug Blaster™ is shown in Exhibit A of the Declaration of Patrick O'Donnell.

The Declaration of Patrick O'Donnell describes a Test Program with the National Gardening Club in which The Bug Blaster™ was evaluated by Club Members. Since the results of the Test Program evaluations were positive, The Bug Blaster™ became a recommended product of the National Home Gardening Club, and the Test Program results were published in the Club's periodical, "Gardening How-to". Applicant has included a copy of Gardening How-to magazine dated March/April, 2003, page 77, which presents the results of the Test Program. (see Exhibit C of the Declaration of Patrick O'Donnell).

Pursuant to Exhibit B of the Declaration, several evaluation forms of Club Members from the Test Program have been attached. These forms illustrate that there has long been a recognized need for easy removal of insects from plants using water without pesticide; others have tried to satisfy this need, but have failed to come up with an easy and effective way to do it; and The Bug Blaster™ satisfies this need.

The following statements are excerpts from the forms:

Wow! This is great! Now I can blast those bad bugs on the back of the leaves without going through all the contortions trying to reach them with an ordinary stream nozzle. Sure makes it easier on this old back. Member Number: 70057991

The Blaster is easy to use all instructions advise spray bottom of the leaves. This is so easy with the Bug Blaster and so effective. Most instructions for aphids is spray with hose. Well Bug Blaster does a better job. I have 21 rose bushes, using Bug Blaster it only took a few moment per bush so easy. Member Number: 80827711

The Bug Blaster is the best! I can blast away the garden pests without harming the plants and without using pesticides, very effective. I would recommend it to all my fellow club members. Member Number: 70015237

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Filed : April 24, 2000

The Bug Blaster is another great tool for my Garden and Orchard. We live in a very dusty place and since the water spray goes under and over the plants and small trees, I have a healthier and cleaner Garden. Thank you for the Bug Blaster. Member Number: 70043504

It Really works. I had such trouble with aphids before using this. Now no pesticide needed. Member Number: 80748304

Would definitely recommend. Used on my crepe myrtle trees with aphid problem. Didn't need to use any chemicals and it worked. Member Number: 81141698

I have a 100% organic garden which prospers, but it always seems the aphids will zero in on one or two areas. The regular hose end sprayer doesn't quite do the trick, but this blaster really sent those aphids flying. (The birds had a feast too!) Member Number: 80037362

As soon as I received the Bug Blaster, I put it to work. I had been fighting an infiltration of aphids on my cucumber plants. I used the Bug Blaster on the cucumber plants a few times and my aphid problem is gone. The Bug Blaster is very easy to use and doesn't damage the foliage and no chemicals. Member Number: 70001955

Bug Blaster works far better than using the garden hose method alone — the water jet design really does a great job in the veggie garden and the rose garden where aphids attacked this year's cucumbers and half of my prize roses — I was very happy to see Bug Blaster get whiteflies out of the grape arbor!! Member Number: 70007469

My area (Southern Calif.) has a heavy infestation of white flies; anybody who has to deal with this curse, knows how difficult it is to get rid of them. I have now been using my "Bug Blaster" on my 8 ft. tall, heavily infested hibiscus, for fifty consecutive days and ... almost neary a pesky white fly to be found!! Thank you, Bug Blaster! Member Number: 70004972

This is an excellent alternative to chemical means of getting rid of bugs, and cleans well to. I've hesitated to using chemicals so have put up with the bugs. Glad now to have an effective method of being rid of them. Member Number: 70036220

I've had a bad whitefly problem this summer and tried safer soap, horicultural oil, and this product. This was by far the funnest and cleanest and least toxic, and worked as well as the other products. Member Number: 70098546

Applicant contends that it is clear from these statements that a need for a reliable way to remove insects from plants without relying on pesticides was well recognized before Applicant's invention. Further, attempts to solve this need have been made, including spraying plants with a

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hose or ordinary nozzle, but these attempts have been unsatisfactory. Still further, the common theme of the evaluators is to praise The Bug Blaster™ because “It works!”

With next reference to the Declaration of Eric J. Anderson, the Declaration of Robert Carrick, the Declaration of Chris Roy, and the Declaration of Rod Ritchie (collectively, the “nurseryman declarations”), further evidence is presented showing that The Bug Blaster™ satisfies a long-felt, previously unsolved need. More specifically, each nurseryman declares that 1) he has personally observed the long-standing need for gardeners to control insects without using pesticides; 2) attempts have been made to address that need. For example, gardeners have been encouraged to spray the undersides of leaves, but this method is unsatisfactory; and 3) he recommends The Bug Blaster™ to customers that wish to control insects without using pesticides because The Bug Blaster™ is effective. Further, each nurseryman declares that The Bug Blaster™ is only rarely returned once purchased, and that this further indicates that customers are generally satisfied that The Bug Blaster™ works as intended.

Applicant contends that the above evidence clearly satisfies the requirements to show that the claimed invention satisfies a long-felt, unsolved need. Specifically, the Test Program evaluations and Declarations establish that 1) there has long been a recognized need for removing insects from plants without using pesticides; 2) others have tried to address this need, but without success; and 3) Applicant’s claimed invention works for its intended purpose, and satisfies the long-felt, unsolved need. Since this is evidence of nonobviousness, Applicant respectfully requests that the Examiner withdraw her rejection of the claims.

The Claimed Invention is Commercially Successful

Another secondary consideration that evidences that the claimed invention is not obvious is that The Bug Blaster™ is a commercially successful product.

Per the M.P.E.P., evidence of commercial success must support that a) the commercial success must be commensurate in scope with the claims; and b) the commercial success must be derived from the claimed invention. M.P.E.P. §716.03(a)-(b).

As discussed above and clarified in the Declaration of Patrick O’Donnell, The Bug Blaster™ is covered by at least Claim 19. Further, Exhibit A shows an embodiment of The Bug Blaster™, and it is clear from comparing The Bug Blaster™ with Claim 19 that the limitations of Claim 19 are key points of function of The Bug Blaster™. As such, The Bug Blaster™ is

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Filed : April 24, 2000

commensurate in scope with the claims as required in M.P.E.P. §716.03(a), and any commercial success of The Bug Blaster™ also should be considered commensurate in scope with the claims.

M.P.E.P. §716.03(b) states “In considering evidence of commercial success, care should be taken to determine that the commercial success alleged is directly derived from the invention claimed . . . and that such success is *not the result of heavy promotion or advertising*, shift in advertising, consumption by purchasers normally tied to applicant or assignee, or other business events extraneous to the merits of the claimed invention.” In the enclosed Second Declaration of Patrick O’Donnell, Mr. O’Donnell makes clear that he has spent very little time and comparatively little money marketing The Bug Blaster™. Further, The Bug Blaster™ is not tied to any other product, and is forced to survive, commercially, on its own merits. Thus, the commercial success of The Bug Blaster™ is directly derived from the invention, and is probative of nonobviousness per M.P.E.P. §716.03(b).

In the Second Declaration, Mr. O’Donnell presents evidence of commercial success, especially given his limited time and budget constraints. For example, every store that has started to sell The Bug Blaster™ continues to sell the product to this day. Further, of the about 600 units of The Bug Blaster™ that have been sold directly (e.g. online), only one unit has been returned for a refund. Furthermore, the Nurseryman Declarations verify that units of The Bug Blaster™ are rarely returned to the store, indicating that the product satisfies the customer. Still further, the Nurseryman Declarations affirmatively state that their stores continue to carry The Bug Blaster™ because, according to sales volume records, it sells well.

Applicant respectfully contends that the commercial success of The Bug Blaster™ is yet further evidence of the patentability of Applicant’s claimed invention.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections and objections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

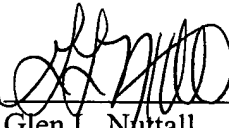
Appl. No. : 09/557,234
Filed : April 24, 2000

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

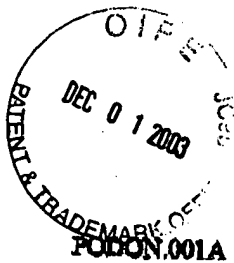
Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 11/26/03

By: 
Glen L. Nuttall
Registration No. 46,188
Attorney of Record
Customer No. 20,995
(949) 760-0404

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Patrick J. F. Donnell
Appl. No. : 09/557,236
Filed : April 24, 2000
For : METHOD AND APPARATUS
FOR DISLODGING INSECTS
FROM PLANTS
Examiner : A. Valenti
Group Art Unit : 3643

DECLARATION OF ROD RITCHIE
UNDER 37 C.F.R. § 1.152

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, ROD RITCHIE, hereby declare that:

1. I am employed as a nurseryman at Plant Depot.
2. I have been employed in the nursery/landscaping/gardening industry for about 20 years, and consider myself generally familiar with the products that are available for purchase in the industry.
3. I am familiar with the method and apparatus sold under the trade name "THE BUG BLASTER™". A copy of materials showing the apparatus and teaching the method are attached as Exhibit A. I personally have used The Bug Blaster™ method and apparatus.
4. The Bug Blaster™ method and apparatus is sold at my retail store.
5. In my experience, several gardeners wish to control insects without using pesticides. I have observed that this has been a long-standing problem for many years. There have been attempts made to help gardeners control such insects. For example, gardeners have been encouraged to use directional sprayers to spray the undersides of leaves in order to dislodge

Appl. No. : 09/557,734
Filed : April 24, 2004

insects. However, these efforts have been largely unsatisfactory because the method has only limited effectiveness and is very cumbersome for users.

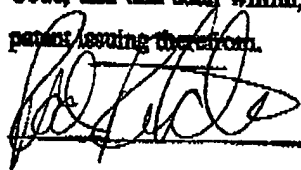
6. I regularly recommend The Bug Blaster™ method and apparatus to customers that wish to control insects without using pesticides. The Bug Blaster™ allows spraying of the whole plant with little or no cumbersome aiming of the spray. Also, the method of use taught in association with The Bug Blaster™ allows changing the elevation of the nozzle to allow treatment of the plant at several orientations by simply rotating the sprayer; however, the spray pattern of the nozzle is not changed by the rotation.

7. In my opinion, The Bug Blaster™ is superior to any non-pesticide insect removal product that may have been available to such customers prior to introduction of The Bug Blaster™.

8. My experience is that customers that purchase The Bug Blaster™ rarely return the product to the store. In my opinion, and based upon my experience in this industry, this indicates that The Bug Blaster™ method and apparatus works well and satisfies the customer.

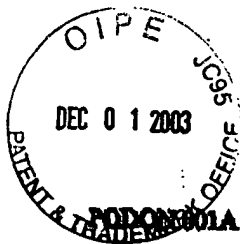
9. On or about 2000, my store began carrying The Bug Blaster™. We have continued to carry The Bug Blaster™ because, according to sales volume records, it sells well. It also satisfies the needs of our customers.

10. I declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or patent issuing therefrom.



Date:

11/16/03



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Patrick J. O'Donnell
Appl. No. : 09/557,234
Filed : April 24, 2000
For : METHOD AND APPARATUS
FOR DISLODGING INSECTS
FROM PLANTS
Examiner : A. Valenti
Group Art Unit : 3643

DECLARATION OF CHRIS ROY
UNDER 37 C.F.R. § 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

ORANGE COUNTY
FARM SUPPLY
1826 W. CHAPMAN AVE.
ORANGE, CA 92868

I, CHRIS ROY, hereby declare that:

1. I am employed as a nurseryman at _____
2. I have been employed in the nursery/landscaping/gardening industry for about 30 years, and consider myself generally familiar with the products that are available for purchase in the industry.

3. I am familiar with the method and apparatus sold under the trade name "THE BUG BLASTER™". A copy of materials showing the apparatus and teaching the method are attached as Exhibit A. I personally have used The Bug Blaster™ method and apparatus.

4. The Bug Blaster™ method and apparatus is sold at my retail store.

5. In my experience, several gardeners wish to control insects without using pesticides. I have observed that this has been a long-standing problem for many years. There have been attempts made to help gardeners control such insects. For example, gardeners have been encouraged to use directional sprayers to spray the undersides of leaves in order to dislodge

Appl. No. : 89/057,234
Filed : April 24, 2000

insects. However, these efforts have been largely unsatisfactory because the method has only limited effectiveness and is very cumbersome for users.

6. I regularly recommend The Bug Blaster™ method and apparatus to customers that wish to control insects without using pesticides. The Bug Blaster™ allows spraying of the whole plant with little or no cumbersome aiming of the spray. Also, the method of use taught in association with The Bug Blaster™ allows changing the elevation of the nozzle to allow treatment of the plant at several orientations by simply rotating the sprayer; however, the spray pattern of the nozzle is not changed by the rotation.

7. In my opinion, The Bug Blaster™ is superior to any non-pesticide insect removal product that may have been available to such customers prior to introduction of The Bug Blaster™.

8. My experience is that customers that purchase The Bug Blaster™ rarely return the product to the store. In my opinion, and based upon my experience in this industry, this indicates that The Bug Blaster™ method and apparatus works well and satisfies the customer.

9. On or about 2,000 my store began carrying The Bug Blaster™. We have continued to carry The Bug Blaster™ because, according to sales volume records, it sells well. It also satisfies the needs of our customers.

10. I declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or patent issuing therefrom.

Chris Roy

Date: NOV 03 2003

ENCLOSURE
10/17/03



PODON.001A

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Patrick J. O'Donnell
Appl. No. : 09/557,234
Filed : April 24, 2000
For : METHOD AND APPARATUS
FOR DISLODGING INSECTS
FROM PLANTS
Examiner : A. Valenti
Group Art Unit : 3643

RECEIVED

DEC 05 2003

GROUP 3600

SECOND DECLARATION OF PATRICK O'DONNELL
UNDER 37 C.F.R. § 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, Patrick O'Donnell, hereby declare that:

1. I am currently employed full time in the landscaping industry. I obtained my C-27 contractor's license about 13 years ago. This license entitles me to install and maintain landscaping. I have worked in the landscaping industry for over twenty years. My experience ranges from running yard maintenance crews to complete landscape construction.
2. For several years I have regularly attended home shows and landscape industry shows. Further, I have pursued personal studies into horticulture, landscaping and gardening.
3. Since about April, 1999 I have been marketing a method and apparatus sold under the trade name "THE BUG BLASTER™".
4. Since I am employed full time in connection with my landscaping business, I am only able to commit time to marketing The Bug Blaster™ method and apparatus during some weekends and short breaks during the week.
5. My marketing approach includes contacting nurseries and similar retail stores and requesting that they stock The Bug Blaster™. I also market The Bug Blaster™ directly over the

Appl. No. : 09/557,234
Filed : April 24, 2000

internet, and have placed advertising in gardening magazines. Overall, I have spent about \$6,000 in marketing The Bug Blaster™.

6. Thirteen stores have ordered and begun selling The Bug Blaster™ to test whether the product would be successful at their store. Each of these 13 stores still carry the product.

7. I have sold approximately 3,500 units of The Bug Blaster™ method and apparatus since I began marketing it in 1999. Revenues for sales of The Bug Blaster™ have been about \$37,000 so far.

8. I have sold approximately 600 units of The Bug Blaster™ directly. Of these sales, only one unit has been returned for a refund.

9. I consider The Bug Blaster™ to be commercially successful considering the limited time that I am able to spend in marketing the product.

10. I declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or patent issuing therefrom.


Patrick O'Donnell

Date: 11-8-03



PODON.001A

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Patrick J. O'Donnell
Appl. No. : 09/557,234
Filed : April 24, 2000
For : METHOD AND APPARATUS
FOR DISLODGING INSECTS
FROM PLANTS
Examiner : A. Valenti
Group Art Unit : 3643

DECLARATION OF ROBERT CARRICK
UNDER 37 C.F.R. § 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, Robert Carrick, hereby declare that:

1. I am employed as a nurseryman at Shore Gardens.
2. I have been employed in the nursery/landscaping/gardening industry for about 30 years, and consider myself generally familiar with the products that are available for purchase in the industry.
3. I am familiar with the method and apparatus sold under the trade name "THE BUG BLASTER™". A copy of materials showing the apparatus and teaching the method are attached as Exhibit A. I personally have used The Bug Blaster™ method and apparatus.
4. The Bug Blaster™ method and apparatus is sold at my retail store.
5. In my experience, several gardeners wish to control insects without using pesticides. I have observed that this has been a long-standing problem for many years. There have been attempts made to help gardeners control such insects. For example, gardeners have been encouraged to use directional sprayers to spray the undersides of leaves in order to dislodge

Appl. No. : 09/557,234
Filed : April 24, 2000

insects. However, these efforts have been largely unsatisfactory because the method has only limited effectiveness and is very cumbersome for users.

6. I regularly recommend The Bug Blaster™ method and apparatus to customers that wish to control insects without using pesticides. The Bug Blaster™ allows spraying of the whole plant with little or no cumbersome aiming of the spray. Also, the method of use taught in association with The Bug Blaster™ allows changing the elevation of the nozzle to allow treatment of the plant at several orientations by simply rotating the sprayer; however, the spray pattern of the nozzle is not changed by the rotation.

7. In my opinion, The Bug Blaster™ is superior to any non-pesticide insect removal product that may have been available to such customers prior to introduction of The Bug Blaster™.

8. My experience is that customers that purchase The Bug Blaster™ rarely return the product to the store. In my opinion, and based upon my experience in this industry, this indicates that The Bug Blaster™ method and apparatus works well and satisfies the customer.

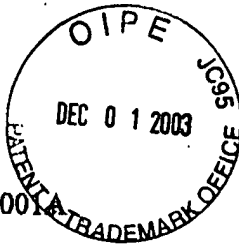
9. On or about ^{06/2000} 2000, my store began carrying The Bug Blaster™. We have continued to carry The Bug Blaster™ because, according to sales volume records, it sells well. It also satisfies the needs of our customers.

10. I declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or patent issuing therefrom.



Date: 11/4/05

PODON.001A



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Patrick J. O'Donnell
Appl. No. : 09/557,234
Filed : April 24, 2000
For : METHOD AND APPARATUS
FOR DISLODGING INSECTS
FROM PLANTS
Examiner : A. Valenti
Group Art Unit : 3643

RECEIVED

DEC 05 2003

GROUP 3800

DECLARATION OF PATRICK O'DONNELL
UNDER 37 C.F.R. § 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, Patrick O'Donnell, hereby declare that:

1. I believe that I am the original and sole inventor of the subject matter described and claimed in the above-captioned application.
2. I currently market a method and apparatus for dislodging insects from plants under the trade name "THE BUG BLASTER™". The Bug Blaster™ method and apparatus provides a hand held spraying apparatus having a handle, an elongate body portion, and a nozzle portion at a distal end of the body portion. The nozzle portion has a longitudinal axis and is adapted to direct water flow outwardly around the circumference of the nozzle axis. The apparatus is configured so that moving the handle correspondingly moves the nozzle portion. Users are taught to connect the spraying apparatus to a source of pressurized water, position the nozzle adjacent an underside of a plant leaf so that a portion of the water directed by the nozzle impacts the leaf underside and the longitudinal axis of the nozzle is generally horizontally disposed at a first elevation, and advancing and retracting the nozzle generally horizontally so that a flow of water impacts the leaf underside along its length. Users are further taught to rotate the apparatus at least about 90° so

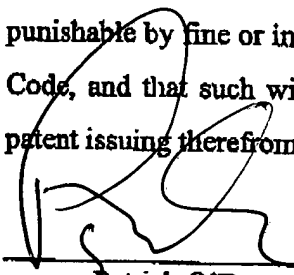
Appl. No. : 09/557,234
Filed : April 24, 2000

that the longitudinal axis of the nozzle is moved to a second elevation but remains generally horizontally disposed during rotation, and advance and retract the nozzle generally horizontally at the second elevation. A copy of instructional materials showing The Bug Blaster™ method and apparatus is attached as Exhibit A.

3. I recently enrolled in a Test Program with the National Gardening Club to test The Bug Blaster™. On information and belief, the National Gardening Club includes Members that are highly motivated gardeners. As part of the Test Program, I supplied several Club Members with The Bug Blaster™ method and apparatus. The Club Members used and evaluated The Bug Blaster™. Copies of several evaluation forms are attached hereto as Exhibit B.

4. I submitted to the Test Program with the understanding that if the Club Member evaluations were positive, The Bug Blaster™ method and apparatus would become a recommended product of The National Gardening Club, and the Test Program results would be published in the Club's periodical, "Gardening How-to". In fact, the Test Program results were published in the March/April 2003 issue of "Gardening How-to" (copy attached as Exhibit C), and The Bug Blaster™ has become a recommended product of the Club as a result of the Test Program.

5. I declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or patent issuing therefrom.


Patrick O'Donnell

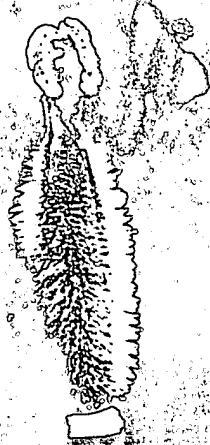
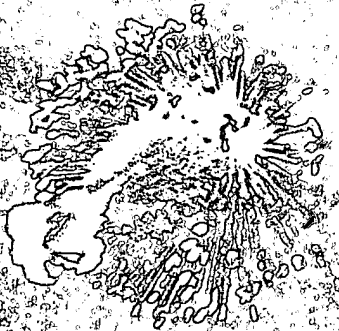
Date: 11-8-03

March/April 2003

www.gardenclub.com

gardening

HOW-TO



Cool Blue Plants
Seed Starting Steps
Making Maple Syrup
Glorious Spring Garden

NATIONAL HOME GARDENING CLUB MAGAZINE

BUG SPRAYER

The Bug Blaster garden sprayer attaches to your garden hose and helps control all types of insects. The nozzle creates a 360-degree wall of water to blast pests from the tops and bottoms of leaves and clear off sooty mold and dirt. It comes in two sizes or a conversion kit. Bug Blaster, 949-493-3310, www.theBugBlaster.com. \$24.95 for a 30-inch wand.



TESTER RATINGS

Ease of Use	7.4
Clarity of Instructions	7.8
Effectiveness	7.2
Overall Rating	7.2

Rick Jennings, Fortuna, CA

"It was excellent for washing bugs off my roses and other plants. Its length made it easy to water both my hanging and low-growing plants."

Muriel Rolandson, Highland, CA "I used it on roses and hibiscuses to eliminate aphids. It was effective without using pesticides and it didn't hurt the flower buds. Great for cleaning leaves too!"

PLANT FOOD

Miracle-Gro Shake 'n Feed Plant Food is a whole new way to feed your plants. Apply this timed-release plant food directly to the soil using the applicator package. Provides constant nutrition to your garden for up to three months. Scotts Miracle-Gro Products, Inc., 800-645-8166, www.miracle-gro.com. \$9.99 for 4½ lbs.



TESTER RATINGS

Clarity of Instructions	8.7
Ease of Use	9.1
Performance	8.4
Overall Rating	8.4

Kathy Wilcox, Hudson, FL "The container was easy to use, mess free, and refillable. I could control exactly where and how much of the product was delivered. The formula didn't burn my plants, and it was easy to rake into the mulch around my plants."

Deborah Earles, Spring Valley, CA "I tried it on a plant that didn't seem to be growing. Within a week it had 3-inch-tall leaf stalks. The blooms in the rest of my garden were also much larger and healthier than last year."

BUTTERFLY GARDEN

The Butterfly Garden is a seeded rollout mat that contains 20 different varieties of annual and perennial wildflowers for sunny spots. The varieties bloom at different times and provide color all summer. Creative Garden Concepts, 888-246-6287, www.creativegardenconcepts.com. \$10.99.



TESTER RATINGS

Clarity of Instructions	8.6
Germination	5.7
Bloom Production	5.9
Overall Rating	6.1

Deborah Lopicola, East Troy, WI

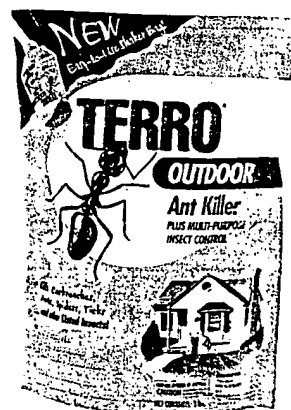
"The butterfly garden was great. The instructions were clear and it was easy to use. Plants germinated quickly and the flowers were beautiful, fragrant, and hardy."

Linda Eddy, Fruitvale, TX "The mat was fast and easy to use. It is versatile—I just cut it to fit my flower bed. The plants were healthy and produced great blooms. The hummingbirds liked it, too!"

ANT KILLER

Terro Outdoor Ant Killer kills ants and other crawling insects before they move indoors. Shake the granules along the perimeter of your home to create a protective barrier, use it as a spot treatment on anthills, spread it where ants enter buildings, or apply it to new anthills. Senoret Chemical Co., store locator at www.terro.com. \$6.99 for 3-lb. bag.

T. Blanchard, Jefferson City, MO "I had a continual problem with ants along my driveway. After only one application, the ants disappeared. I also applied it near my sliding glass doors where ants come in every year. This year, no ants!"



Shirley Williams, Waupun, WI "My yard was covered with anthills. After using this product, there were none. It was easy to use, and I liked the design of the shaker bag."

TESTER RATINGS

Clarity of Instructions	9.0
Ease of Use	8.9
Effectiveness	7.9
Overall Rating	7.9